

JUN 16 2006

Docket No.: MASIMO.236C1

June 16, 2006

App. No.: 10/695405

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Please Direct All Correspondence to Customer Number 20995

TERMINAL DISCLAIMER UNDER 37 CFR § 1.321

Applicant : Mohamed K. Diab
App. No : 10/695405
Filed : October 28, 2003
For : OPTICAL SPECTROSCOPY
PATHLENGTH MEASUREMENT
SYSTEM
Examiner : Eric F. Winakur
Art Unit : 3735

CERTIFICATE OF FAX TRANSMISSION
PTO CENTRALIZED FAX

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June 16, 2006

(Date)

Total number of pages including this sheet: 2

Thom D. Kessler, Reg. No. 57,046

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Disclaimer by Assignee

Assignee, Masimo Corporation ("Assignee"), hereby disclaims, except as provided below, the terminal part of any patent granted on the above-referenced application which would extend beyond the expiration date of the full statutory term of U.S. Patent No. 6,640,116, and hereby agrees that any patent so granted on the above-identified application shall be enforceable only for and during such period that the above-identified application and U.S. Patent No. 6,640,116 are co-owned. This agreement extends to any patent granted on the above-referenced application and shall be binding on its successors or assigns.

Assignee does not disclaim any terminal part of any patent granted on the above-referenced application prior to the earlier of the expiration date of the full statutory term of U.S. Patent No. 6,640,116, and that of any patent issuing on the above-identified application in the event that either one later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. § 1.321(a), has all claims canceled by a reexamination certificate, or is otherwise terminated prior to expiration of its full statutory term, except for the separation of legal title stated above.

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Right of Assignee and Ownership

In accordance with 37 C.F.R. § 3.73(b), Assignee represents that it is the owner of a 100 percent interest in Application No. 10/695405 and co-owned, Application No. 09/925,982. The assignment of Application No. 09/925,982 is recorded at Reel No. 012068, Frame No. 0737 by the Assignment Branch of the Patent and Trademark Office. The Assignee represents that, to the best of Assignee's knowledge and belief, title is in the Assignee seeking to take action.

Empowerment of Attorney

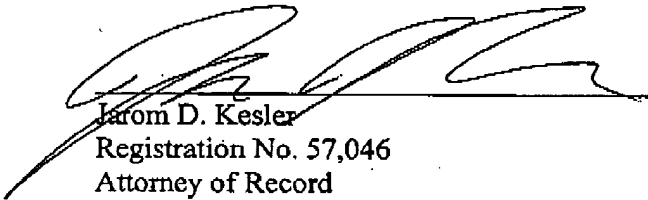
Pursuant to 37 C.F.R. 1.321(a) the undersigned attorney of record is empowered to act on behalf of the Assignee, by virtue of a Power of Attorney.

This Terminal Disclaimer is accompanied by the \$130 fee set forth in 37 C.F.R. § 1.20(d).

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR LLP

Date: June 16, 2006



Jarom D. Kesler
Registration No. 57,046
Attorney of Record
Customer No. 20,995
(949) 760-0404

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